

PREFACE

The unrestricted use of solitary confinement can lead to violations of fundamental human rights, and in particular the right to personal integrity (physical and mental), which is at the very heart of my mandate as United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment. Solitary confinement is a global practice, often used for prolonged periods of time, for different reasons and in varying contexts, which include prisons, administrative detention, youth detention facilities, immigration centres, and mental health institutions. Despite irrefutable evidence of the severe psychological harm that can result from solitary confinement, this practice is, generally speaking, subject to little regulation. It is overused and imposed in conditions which result in cruel, inhuman or degrading treatment, and even torture. That is why I welcome publication and congratulate Dr Sharon Shalev for her excellent work and for ensuring its circulation in Spanish. I am very grateful and honoured to have been invited to write this short introduction. This publication will no doubt considerably raise awareness regarding this practice and its adverse effects on the mental and physical health of those subjected to it. It will also call our attention to the quality of penitentiary systems, since solitary confinement, and in particular when prolonged, does not contribute to the rehabilitation of detained persons, although this should be the ultimate objective of deprivation of liberty.

As Special Rapporteur, I have worked on this theme from various angles and in differing contexts. In October of 2011, I presented to the United Nations General Assembly a thematic report that examined solitary confinement across the world from the perspective of the absolute international prohibition of torture and ill-treatment, and provided States with a series of recommendations. In March of 2013, I participated in the first thematic hearing held by the Inter-American Commission on Human Rights (IACHR) on solitary confinement in the Americas. As a result, the IACHR adopted my recommendations and called onto the member States of the Organization of American States to adopt the necessary measures to prohibit the use of prolonged solitary confinement. Moreover, in my thematic report presented to the 68th Session of the United Nations General Assembly in October of 2013, I recommended that the Standard Minimum Rules for the Treatment of Prisoners be revised to include an explicit prohibition of prolonged solitary confinement, to provide a definition of this practice, and to establish an absolute prohibition of the solitary confinement of children, pregnant women, breastfeeding women, and persons with mental disability. The ongoing revision process of this important document is an excellent opportunity to define this practice and guarantee that it will not be used in ways that breach the absolute prohibition of torture and ill-treatment.

In all these instances, I have defined solitary confinement on the basis of the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Although the form of this practice and the name given to it may vary, its overriding characteristic is the absence of meaningful human contact by the isolated person with other persons or with the world outside his or her cell. Allowing this kind of contact, for example through interaction with other inmates or penitentiary personnel, visits, leisure activities, productive work, reading and sports, is essential. Not only does it favour rehabilitation, but it also protects the psychological health of the detained persons and ensures that States comply with their international obligations to prevent ill-treatment and torture.

Depending on the reasons for its use, the conditions through which it is imposed, its duration, the gravity of its effects and other circumstances, solitary confinement can amount to cruel, inhuman or degrading treatment, or even to torture. There is strong evidence suggesting that solitary confinement, even for a short period, adversely impacts on mental health. The gravity of these impacts increases with the passage of time and they may eventually become irreversible. Research in this field has established that solitary confinement can cause mental illnesses, including a syndrome described as “prison psychosis”, which manifests in symptoms including anxiety, depression, anger, cognitive disturbances, paranoia and psychosis, and can lead to self-harm. Moreover, the isolation and absence of witnesses in solitary confinement can facilitate the commission of other acts of torture and ill-treatment.

The duration of solitary confinement can vary considerably, from several months to years, or even decades. Prolonged solitary confinement raises special concerns, because the risk of grave and irreparable harm to the detained person increases with the length of isolation and the uncertainty regarding its duration. In my public declarations on this theme, I have defined prolonged solitary confinement as any period in excess of 15 days. This definition reflects the fact that most of the scientific literature shows that, after 15 days, certain changes in brain functions occur and the harmful psychological effects of isolation can become irreversible. Prolonged solitary confinement must be absolutely prohibited, because it always amounts to cruel, inhuman or degrading treatment, and may even constitute torture, in breach of article 7 of the International Covenant on Civil and Political Rights, articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the *jus cogens* and customary prohibition of torture and ill-treatment. The Human Rights Committee and the Committee against Torture have also adopted this position. The European Court of Human Rights has recognised that “complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason”¹. Similarly, the Inter-American Court on Human Rights has held that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being”².

Establishing 15 days as the time limit after which confinement must be considered as prolonged is not arbitrary: as indicated above, it is based on medical and psychiatric literature. Nevertheless, there is no doubt that this is much shorter than the duration provided by almost all domestic penitentiary regulations defining serious breaches to rules of prison discipline. I should point out that 15 days is the maximum duration in conditions of extreme confinement: 24 hours per day in a cell without natural light, without reading or writing material, furniture, with no radio, etc. In cases of confinement providing one or two hours of exercise outside one’s cell per day, access to mail, radio or television, a longer time limit may be acceptable. It will be important to establish the applicable time limit on a case-by-case basis, and to institute an absolute prohibition of any confinement that exceeds it.

Although imposing confinement for short periods of time may be justifiable in certain circumstances, its prolonged use by the State is never legitimate. This does not imply, however, that no confinement lasting less than 15 days constitutes ill-treatment or torture. Evaluating if seclusion in isolation constitutes torture or cruel, inhuman or degrading treatment must take into account all the relevant circumstances and be analysed on an individualised basis. These circumstances include the

¹ *Ilașcu and others v. Moldova and Russia*, Application No. 48787/99, European Court of Human Rights (2004), para. 432.

² *Velázquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights, Series C, No. 4, para. 156 (1988).

objective pursued by the confinement, its conditions, duration, and effects, as well as the subjective conditions of each and every of the detained persons.

Commonly invoked justifications for solitary confinement are its use as a sanction or as a protection measure. It is never justified as a modality of execution for a prison sentence or a reclusion order, since it constitutes an unreasonable punishment and does not promote rehabilitation. When it is used as a “prison administration” measure, for instance to separate individuals who are believed to form part of the same organised crime structure, solitary confinement violates the right to due process, since the detained person is deprived of the opportunity to challenge the decision made. Guards and prison personnel may easily make an excessive use of solitary confinement while invoking those reasons. Any case where the victims’ suffering reaches the required degree of severity will amount to ill-treatment and possibly to torture.

A similar conclusion must be reached when solitary confinement is used during pre-trial detention. In this context, solitary confinement results in psychological pressure that can lead detainees to make declarations that they would have not made otherwise. In my experience as Rapporteur, I have observed that solitary confinement during pre-trial detention is often used as a deliberate method to obtain information or confessions. In such conditions, confinement amounts to a coercive tool and constitutes a cruel, inhuman or degrading treatment, and possibly torture. Moreover, when it is automatically applied on the basis of the gravity of the imputed crime, solitary confinement contradicts the presumption of innocence. Solitary confinement during pre-trial detention weakens internal and external safeguards, and as a consequence increases the risk that other acts of torture and ill-treatment be committed.

Solitary confinement should never be imposed to minors, pregnant or breastfeeding women, or persons with mental disability. In such cases, in view of the particular vulnerability of the detained person, solitary confinement always amounts to cruel, inhuman or degrading treatment, or torture. With regards to minors, the United Nations General Assembly, the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Committee on the Rights of the Child have declared that solitary confinement must be strictly prohibited.

Recourse to confinement is only acceptable in exceptional circumstances and as a last resort. In any case, it must last for as short a time as possible, must allow for the detained person to challenge this measure, and provide him or her with the reasons for its application. Detained persons subject to regimes of solitary confinement must have access to legal counsel and to health care. It is essential that solitary confinement never be prolonged for more than 15 days and never be imposed onto minors, pregnant or breastfeeding women, or persons with mental disability.

This publication will no doubt contribute to the dissemination of the necessary guarantees mentioned and be an important tool for the efforts of civil society and governments to eradicate torture and ill-treatment.

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